

**Internal Revenue Service**

Number: **200803029**  
Release Date: 1/18/2008

UIL Number: 501.03-00

Date: **OCT 24 2007**

(A)  
(B)  
(C)

Legend: (A) =  
(B) =  
(C) =  
(D) =  
(E) =  
(F) =  
(G) =

**Department of the Treasury**

**Person to Contact:**

Employee ID Number:  
Tel:  
Fax:  
Contact Hours: 8:00 a.m.-4:30 p.m.

**Refer Reply to:**

AP:FE

**In Re:**

EO Examination

**Tax Period(s) Ended:**

06/

This is a Final Adverse Determination/Ruling Letter concerning your organization's continued tax-exempt status under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of the Code for all years beginning on or after July 1,

The evidence presented disclosed that your organization was incorporated under the laws of the State of on August 24, under the provisions of Section 402 of the Not-For-Profit Corporate Laws.

Your purposes, as stated in your Certificate of Incorporation are "[to] be operated exclusively for charitable purposes by conducting or supporting activities for the benefit of the qualified organizations specified herein, through the financial support of said organizations. (D) (hereinafter referred to as '(E)'), is so specified. Grants from the Corporation will be made in furtherance of the mission of (E), i.e., to aid, support and provide for the welfare, relief, settlement and rehabilitation of of or in the United States of America, its territorial possessions or in any foreign countries, and for the settlement and welfare of and elsewhere throughout the world. An organization is a "qualified organization" for purposes of the Certificate only if it is described in Section 501(c)(3) and Sections 509(a)(1) or (2) of the Internal Revenue Code of 1986, as amended (hereinafter the 'Code')."

In response to question 1 of Part II, Activities and Operational Information (dealing with past, present and planned activities), (F) stated that it was formed to make charitable distributions in affiliation with {(E)} a

[Section] 501(c)(3) organization. [(F)] will depend on [(E)] for recommendations as to appropriate beneficiaries of charitable distributions."

In response to question 2 of Part II, (dealing with sources of support) (F) stated, "it contemplated that support would come from contributions, grants, and bequests in any form and the income derived from investments thereof."

In response to question 3 of Part II, (dealing with actual and planned fundraising programs) (F) stated "all funds to be raised from Trustees and family members."

In response to a request for complete financial statements for the current year and the two (2) following years on the Form 1023, (F) provided the following:

**Statement of Receipts and Expenditures**

	<u>6/30/</u>	<u>6/30/</u>	<u>6/30/</u>
Gifts, grants and contributions received	\$	\$	\$
Total	\$	\$	\$
Gross receipts from admissions, etc.	\$	\$	\$
Total	\$	\$	\$
Fundraising expenses	\$	\$	\$
Contributions, gifts, grants and similar amounts paid	\$	\$	\$
Total expenses	\$	\$	\$
Excess of revenues over expenses	\$	\$	\$

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**Balance Sheet**

**Assets**

Corporate Stock \$

Total Assets \$

**Liabilities**

Total liabilities \$

**Fund Balance**

Total fund balance or net assets \$

Total liabilities and fund balances or net assets \$

**Corporate Stock .**

shares of (G)

Section 501(c)(3) of the Code exempts from Federal income taxes organizations that are organized and operated exclusively for religious, charitable, etc. purposes were no part of its net earnings inure to the benefit of any private shareholder or individual and no substantial part of its activities involve the carrying on of propaganda or otherwise attempting to influence legislation.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that "in order to be exempt as an organization described in Section 501(c)(3) of the Code an organization must be both organized and operated exclusively for one or more purposes specified in such section. If any organization fails to meet either the organizational or operational test it is not exempt."

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that "an organization is not organized and operated exclusively for one or more of the purposes specified unless it serves a public rather than a private interest. Thus to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests."

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Section 1.501(c)(3)-1(d)(2) of the Regulations provides "that the term 'charitable' is used in Section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in Section 501(c)(3) or other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such terms includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of Government, and promotion of social welfare by organization's designed to accomplish any of the above purposes ..."

Internal Revenue Manual Section 4.75.22.13.3.2 [Determine If the Organization is Inactive] (7-1-2003) provides that "Where an organization recognized as exempt becomes temporarily inactive but retains its identity as a corporation or association, the exempt status need not be terminated. However, if the evidence clearly indicates that the organization will not resume operating for an exempt purpose, as required by Section 1.501(c)(3)-1(c)(1), the examiner should terminate the exempt status. Rev. Rul. 90-27, 1990-1 C.B. 514." (Underlining added.)

Rev. Rul. 90-27 (supra) provides procedures with regard to applications for recognition of exemption from Federal income tax under Sections 501 and 521 and with respect to revocation or modification of exemption rulings and determination letters.

Section 5.02 provides that "Exempt status will be recognized in advance of operation if proposed operations can be described in sufficient detail to permit a conclusion that the charity will clearly meet the particular requirements of the section under which exemption is claimed ... The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts and the nature of contemplated expenditures."

Section 13.01 provides that "A ruling or determination letter recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption ... If the organization is required to alter its activities or to made substantial amendments to its enabling instrument, the ruling or determination letter recognizing its exempt status will be effective as of the date specified therein. If a non-substantive amendment is made, exemption will ordinarily be recognized as of the date of formation."

Section 13.02 provides that "a ruling or determination letter recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purposes, or the method of operation of the organization."

Section 14.01 provides that "[a] revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner material different from that originally represented ... Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change ... When Section 7805(b) relief is granted ... retroactivity of the revocation or modification ordinarily will be limited to a date not earlier than that on which the original ruling or determination letter is modified or revoked." (Underlining added.)

In World Family Corporation v. Commissioner, 81 T.C. 958 the Tax Court held that "the [petitioner] was organized and operated exclusively for exempt purposes and that no part of its net earnings inured to the benefit of any private shareholder or individual. The court determined that petitioner had established criteria adequate to guard against abuse and that its proposed missionary support program was described in sufficient detail to warrant tax-exempt status."

In pertinent part, "petitioner already has received some contributions in kind but has not yet converted them and distributed the proceeds. The contributions to date are (1) 211,199 shares of Taluco, Inc. stock valued at \$1 per share during November 1998, and (2) 20,000 shares of Phoenix Co. stock valued at 'Bid 1 1/8, Ask 1 5/8' per share on September 29, 1998 ... Petitioner's plan a fundraising program based on mail solicitations to church and community leaders, business people, and others ..."

The Court's rationale was that "Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will meet the particular requirements of the section in which exemptions is claimed ... We denied exempt status to the petitioner in Church in Boston, 71 T.C. 102 for failure to provide sufficient information. See General Conference of the Free Church of America, 71 T.C. 920 involving circumstances sharply distinct from this case. We were persuaded to rule unfavorably where the petitioning organization was uncooperative in providing information ... We have also been persuaded to rule unfavorably where the nature of the proposed activities is especially ambiguous. In Levy Family Tribes Association v. Commissioner, 69 T.C. 615 ... we find petitioners proposed missionary support program to be adequately described in the administrative record, justifying the conclusion that is operated exclusively for exempt purposes."

In LaVendad v. Commissioner, 82 T.C. 215 the Tax Court held that the petition failed to qualify for tax exempt status under Section 501(c)(3) of the Code based upon its failure to provide details regarding its proposed operation.

In pertinent part, the Court's rationale was that "petitioner has not begun operations and does not plan to commence its activities prior to obtaining tax-exempt status. It is acknowledged that an organization may seek tax-exempt status prior to beginning operations. It must, however, described proposed operations in sufficient detail to permit the conclusion that the organization will meet the necessary requirements of the exemption ... petitioner merely has made statements as to its intended purposes without supplying any concrete information as to how it purports to carry out these purposes. Petitioner has no fundraising program, and no solicitations are planned. Petitioner intends to receive its financial support from donations from organizations, their friends, and others that are interested, yet petitioner has supplied no estimate of anticipated income ... The administrative record does not demonstrate that the petitioner will operate exclusively in furtherance of an exempt purpose. Therefore, respondent's denial of petitioner's request for tax-exempt status is reasonable." (Underlining added.)

Under the rationale of the Tax Court's decision in World Family (supra) and LaVendad (supra) if sufficient detailed information were provided, by an applicant for exemption, it would establish that the organization would meet the operational requirements required for tax-exempt status, and, as such, exempt status would be granted.

Based upon the above facts, law and court decisions cited, it has been determined that your organization has failed to meet the operational test required under Section 501(c)(3) of the Code and applicable regulations for all years beginning on or after July 1, .

This determination is based upon the fact that your organization's inactivity from its date of incorporation [August 24, ] to June 30, was temporary in nature due, in part to its initial start-up and to your organization's lack of liquid assets to make the required charitable contributions to other organizations to assist them in carrying on their charitable activities.

In conclusion, we have determined that you are not operated exclusively for Section 501(c)(3) purposes for all years beginning on or after July 1, . Accordingly, your organization does not continue to qualify for exemption under Section 501(a) of the Internal Revenue Code for all years beginning on or after July 1,

Your organization is required to file Federal income tax returns on Form 1120, U.S. Corporate Income Tax Return, for all years beginning on or after July 1, if you have not already done so.

Contributions to your organization are not deductible under Section 170 of the Code for all periods beginning on or after July 1, .

You have waived your right to contest this determination under the declaratory judgment provisions of Section 7428 of the Code by your execution of a Form 906, Closing Agreement Concerning Specific Matters.

As provided in Section 6104(c) of the Internal Revenue Code and applicable regulations, the appropriate state officials will be notified of this determination.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Kevin M. Brown  
Acting Commissioner

By

Charles F. Fisher  
Appeals Team Manager



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
625 Fulton Street  
Brooklyn, NY 11201

Taxpayer Identification Number:

Form:

990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Organization

**Certified Mail - Return Receipt Requested**

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

Letter 3618 (04-2002)  
Catalog Number 34809F

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate Service  
Local Office

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

R.C. Johnson  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended

**Legend:**

**Org = Name of Organization**

**Date 1 = Date of Incorporation**

**Date2= Date of exemption**

**Date3 = Effective Date**

**Founder = Name of Founder**

**Dot.Com = Name of Stock**

**SupOrg = Name of Organization being supported**

**Issues:**

Whether the tax-exempt status of an organization that was inactive for the first four years of its existence should be revoked retroactively.

**Facts:**

Organization was incorporated in the state on Date1. The purposes of the organization as stated in the certificate of Incorporation are as follows:

" The Corporation is organized and shall be operated exclusively for charitable purposes by conducting or supporting activities for the benefit of the qualified organization specified herein, through the financial support of said organization. SuppOrg is so specified. Grants from the Corporation will be made in furtherance of the mission of SupOrg.

Exemption under section 501(c)(3) of the Internal Revenue Code was granted in a letter dated February 23, 20xx. The effective date of exemption is Date2.

The organization was funded on August 31, 20xx by a grant of \_\_\_\_\_ shares of Dot.Com stock from Founder. Founder is the president of ORG. He is also the president of Dot.Com. The Form 990 for the year ended June 30, 20xx indicated that the stock was valued at \$ \_\_\_\_\_ at the time of receipt by the organization. However, the stock had a reported value of \$ \_\_\_\_\_ at the end of the tax year on June 30, 20xx on the Form 990. Our analysis indicates that the stock had no value at the time of the contribution to ORG.

For the year ended June 30, 20xx, it was determined that the only disbursements made by the organization were \$ \_\_\_\_\_ for filing and incorporation fees. The Form 990 for the subsequent year indicates that the only activity was a disbursement of \$ \_\_\_\_\_ for filing fees.

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<b>Name of Taxpayer</b> ORG		<b>Year/Period Ended</b>

We were informed by a representative of SupOrg in June of 20xx that the organization did not engage in any charitable activities since inception and did not expect to engage in any charitable activities in the future.

In July of 20xx, after our examination had begun we informed the organization that they did not meet the operational test under IRC 501(c)(3) and proposed revocation. The organization at that time called a meeting of its board of directors and decided to commence its "charitable activities". The organization then received a contribution of \$ from its President Founder and made a contribution to the SupOrg.

### **Law:**

Section 501(c)(3) of the Code describes certain organizations exempt from Federal Income Tax under section 501(a) and reads, in part as follows:

Corporations, and any community chest fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or the prevention of cruelty to children or animals, no part the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1 of the Income Tax Regulations, relating to the requirements of exemption of such clubs under section 501(a), reads in part as follows:

In order to be exempt as an organization described in section 501(c)(3), the organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

### **Taxpayer's Position:**

The organization believes that it is entitled to exemption under section 501(c)(3) because it was created to support another organization described in section 501(c)(3). The organization states that they had a charitable intent even though no contributions were made from the date of formation until July of 20xx. The organization cited the proposed budgets on the Form 1023 as evidence of their charitable intent. The proposed budgets indicate that the organization intended to make grants of \$ per year in the periods ending June 30, 20xx and June 30, 20xx.

### **Government's Position:**

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended

Our examination of your Form 990 for the year ended June 30, 20xx and a review of your operations for subsequent periods disclosed the following:

1. The organization did not meet the operational test under section 501(c)(3) of the Internal Revenue Code. The organization did not have any charitable activities from formation until July of 20xx and only after an audit was started by the Internal Revenue Service..
2. The majority of income was derived from a contribution of stock that appears to be worthless and has not produced any dividend income.

An organization cannot be exempt merely because it had an intention to perform activities that are exempt under section 501(c)(3). Founder did not make additional contributions of \$            per year as the proposed budgets indicate for 20xx and 20xx. A \$            contribution was made by Founder in July of 20xx after the organization was informed of our proposed revocation.

Accordingly, your organization failed the operational test under section 501(c)(3) of the Internal Revenue Code, because your organization did not have any charitable activity.

Based on the above facts and law, we have determined that your organization failed to qualify for any other subsection of IRC 501(c). Accordingly, our letter granting exemption under section 501(c)(3) of the Internal Revenue Code is revoked effective Date3.

### **Conclusion:**

Based on the foregoing reason, the organization does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked.